

**Letter of Findings Number: 02-20140099P
Late Payment Penalty
For Tax Years 2010, 2011, and 2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is suspended by the publication of another document in the Indiana Register.

ISSUE

I. Tax Administration – Late Payment Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent late payment penalty.

STATEMENT OF FACTS

Taxpayer is a Canadian company. Taxpayer was assessed a penalty for late payment of income tax for the years 2010, 2011, and 2012. Taxpayer protested the assessment of the ten-percent penalty for these late filings. A hearing was held on Taxpayer's protest. Taxpayer provided additional documentation subsequent to the hearing. This Letter of Findings ensues. Additional facts will be provided as necessary.

I. Tax Administration – Late Payment Penalty.

DISCUSSION

Taxpayer protests the imposition of a penalty for late payment of its income tax for the years 2010, 2011, and 2012. Taxpayer protests the imposition of the ten percent negligence penalty on Taxpayer's failure to file its return and remit its tax in a timely manner.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Therefore, Indiana law requires Taxpayer to demonstrate that it had reasonable cause for not filing or remitting the full income tax due. In order to establish reasonable cause, Taxpayer must make an affirmative showing that it exercised "ordinary business care and prudence" in conducting the duties from which the additional tax and penalty arose. [45 IAC 15-11-2\(c\)](#).

As a result of the hearing, Taxpayer provided additional explanation of why it originally did not report its income tax due. Taxpayer's two members, a husband and wife, are Canadian nationals. They assumed that the LLC did not have any federal, state or local filing obligations in the United States if the company did not have any income to report, as is the case in Canada. Taxpayer was formed in 2010 to hold its members' real property investments in the United States. During the years at issue, Taxpayer's only Indiana asset was a single-family residence in Indiana which was purchased in January of 2011. The property was swapped in January of 2012 for a single-family house in Tennessee. Taxpayer stated the expenses of the property exceeded its income due to mismanagement of the property. In late 2012, Taxpayer's members realized that Taxpayer had tax filing obligations in the United States and retained the services of an accountant who understood federal and state filing requirements in the United States.

As required by [45 IAC 15-11-2\(c\)](#), after review of the documentation and analysis provided in the protest process, Taxpayer has affirmatively established that its failure to correctly file its 2010, 2011, and 2012 returns was not due to willful neglect. While technically the late payment negligence penalty was properly imposed, the overall circumstances in this case suggest waiver of the penalty is appropriate.

Therefore, the Department will abate the ten-percent penalty at issue.

FINDING

Taxpayer's protest is sustained.

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